

(4) If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, the contracting officer may use the clause with its *Alternate IV*.

(c)(1) The contracting officer may insert a clause substantially the same as the clause at 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, in solicitations and contracts when performance specifications or design are of major importance; a fixed-price supply, service, or research and development contract for systems and equipment is contemplated; and the use of a warranty clause has been approved under agency procedures.

(2) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), the contracting officer may use the clause with its *Alternate I*.

(3) If a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its *Alternate II*.

(4) If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, the contracting officer may use the clause with its *Alternate III*.

(d) The contracting officer may insert a clause substantially the same as the clause at 52.246-20, Warranty of Services, in solicitations and contracts for services when a fixed-price contract for services is contemplated and the use of a warranty clause has been approved under agency procedures; unless a clause substantially the same as the clause at 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, has been used.

(e)(1) The contracting officer may insert a clause substantially the same as the clause at 52.246-21, Warranty of Construction, in solicitations and contracts when a fixed-price construction contract (see 46.705(c)) is contemplated and the use of a warranty clause has been approved under agency procedures.

(2) If the Government specifies in the contract the use of any equipment by *brand name and model*, the contracting officer may use the clause with its *Alternate I*.

[48 FR 42415, Sept. 19, 1983, as amended at 60 FR 48250, Sept. 18, 1995; 66 FR 2133, Jan. 10, 2001]

Subpart 46.8—Contractor Liability for Loss of or Damage to Property of the Government

46.800 Scope of subpart.

This subpart prescribes policies and procedures for limiting contractor liability for loss of or damage to property of the Government that (a) occurs after acceptance and (b) results from defects or deficiencies in the supplies delivered or services performed.

46.801 Applicability.

(a) This subpart applies to contracts other than those for (1) information technology, including telecommunications, (2) construction, (3) architect-engineer services, and (4) maintenance and rehabilitation of real property. This subpart does not apply to commercial items.

(b) See subpart 46.7, Warranties, for policies and procedures concerning contractor liability caused by nonconforming technical data.

[48 FR 42415, Sept. 19, 1983, as amended at 61 FR 41471, Aug. 8, 1996; 66 FR 53484, Oct. 22, 2001]

46.802 Definition.

High-value item, as used in this subpart, means a contract end item that (a) has a high unit cost (normally exceeding \$100,000 per unit), such as an aircraft, an aircraft engine, a communication system, a computer system, a missile, or a ship, and (b) is designated by the contracting officer as a high-value item.

46.803 Policy.

(a) *General*. The Government will generally act as a self-insurer by relieving contractors, as specified in this subpart, of liability for loss of or damage to property of the Government that (1) occurs after acceptance of supplies delivered or services performed

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under a contract and (2) results from defects or deficiencies in the supplies or services. However, the Government will not relieve the contractor of liability for loss of or damage to the contract end item itself, except for high-value items.

(b) *High-value items.* In contracts requiring delivery of high-value items, the Government will relieve contractors of contractual liability for loss of or damage to those items. However, this relief shall not limit the Government's rights arising under the contract to—

(1) Have any defective item or its components corrected, repaired, or replaced when the defect or deficiency is discovered before the loss of or damage to a high-value item occurs; or

(2) Obtain equitable relief when the defect or deficiency is discovered after such loss or damage occurs.

(c) *Exception.* The Government will not provide contractual relief under paragraphs (a) and (b) above when contractor liability can be preserved without increasing the contract price.

(d) *Limitations.* Subject to the specific terms of the limitation of liability clause included in the contract, the relief provided under paragraphs (a) and (b) above does not apply—

(1) To the extent that contractor liability is expressly provided under a contract clause authorized by this regulation;

(2) When a defect or deficiency in, or the Government's acceptance of, the supplies or services results from willful misconduct or lack of good faith on the part of the contractor's managerial personnel; or

(3) To the extent that any contractor insurance, or self-insurance reserve, covers liability for loss or damage suffered by the Government through purchase or use of the supplies delivered or services performed under the contract.

46.805 Contract clauses.

(a) *Contracts that exceed the simplified acquisition threshold.* The contracting officer shall insert the appropriate clause or combination of clauses specified in subparagraphs (a)(1) through (a)(5) of this section in solicitations and contracts when the contract amount is expected to be in excess of

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the simplified acquisition threshold and the contract is subject to the requirements of this subpart as indicated in 46.801:

(1) In contracts requiring delivery of end items that are not high-value items, insert the clause at 52.246–23, Limitation of Liability.

(2) In contracts requiring delivery of high-value items, insert the clause at 52.246–24, Limitation of Liability—High-Value Items.

(3) In contracts requiring delivery of both high-value items and other end items, insert both clauses prescribed in (1) and (2) above, *Alternate 1* of the clause at 52.246–24, and identify clearly in the contract schedule the line items designated as high-value items.

(4) In contracts requiring the performance of services, insert the clause at 52.246–25, Limitation of Liability—Services.

(5) In contracts requiring both the performance of services and the delivery of end items, insert the clause prescribed in subparagraph (4) above and the appropriate clause or clauses prescribed in subparagraph (1), (2), or (3) above, and identify clearly in the contract schedule any high-value line items.

(b) *Acquisitions at or below the simplified acquisition threshold.* The clauses prescribed by paragraph (a) of this section are not required for contracts at or below the simplified acquisition threshold. However, in response to a contractor's specific request, the contracting officer may insert the clauses prescribed in paragraph (a)(1) or (a)(4) of this section in a contract at or below the simplified acquisition threshold and may obtain any price reduction that is appropriate.

[48 FR 42415, Sept. 19, 1983, as amended at 55 FR 3886, Feb. 5, 1990; 60 FR 34760, July 3, 1995; 61 FR 39190, July 26, 1996]

PART 47—TRANSPORTATION

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